

Senate Bill 344
February 18, 2011
Presented by Bob Lane
Senate Judiciary Committee

Mr. Chairman and committee members, I am Bob Lane, Chief Legal Counsel of Montana Department of Fish, Wildlife & Parks (FWP). FWP opposes Senate Bill 344.

The consequences of SB344 are huge. The bill virtually limits or prohibits any government action that can be claimed to restrict the use of property or that negatively affects the profits of a business. The actions of government that protect property and that enable businesses to operate profitably are given no consideration.

For FWP, the draconian and short-sighted impacts of SB344 are best illustrated by specific examples.

FWP and the FWP Commission manage and protect the state's wildlife resources. Outfitters have a business of guiding hunters and fishers. SB344 will undermine the ability of FWP and the FWP Commission to fulfill their constitutional and statutory requirements to manage and protect the state's wildlife resources, will require FWP to act as an insurer or guarantor of each outfitter business, and in the process may actually destroy outfitting businesses.

As an example, consider an elk hunting district such as Hunting District 380 in the Elkhorn Mountains. The trophy elk hunting there is truly prized. Assume in year one that there are enough bull elk to support the issuance of 100 permits for bull elk. Assume a successful hunting season followed by a hard winter. In year two, the FWP Commission should only authorize 75 bull permits to maintain the biological integrity of the Elkhorn herd. However, because FWP will not have the money to pay outfitters for potentially having 25 fewer permits, the FWP Commission is forced to again issue 100 permits. Once started, this downward spiral may inescapably continue until there are almost no trophy bull elk but still 100 permits. At this point, outfitters would be selling an illustration of a hunt until their clients realize Montana is no longer the last best place for an elk hunt and, as a consequence, outfitted elk hunting in the Elkhorns will dry up. There may even be a Catch-22 here. If the FWP Commission allows the bull elk to be decimated, then this may be the basis for a takings claim itself.

If you think this example is farfetched, it is not. In the late 1980s when there was an unlimited bull elk season in Hunting District 380, there were virtually no mature bull elk, only 1-3 per 100 cow elk. This was dramatically reversed when the FWP Commission went to a controlled permit season.

For another example, consider fishing outfitting in the Big Hole River, a very popular trophy opportunity. In low water conditions with high water temperature, trout are very vulnerable so in these times, the FWP Commission will curtail fishing to protect the resource. Again the same scenario will play out because outfitter fishing cannot be restricted. The reputation of the Big Hole River will suffer and so will outfitting businesses on the river.

The above examples result from the handcuffs that SB344 will put on the Commission's ability to protect the basic resource. SB344 ignores the basic tenet that outfitters benefit from careful regulation of hunting and fishing. Thus, Senate Bill 344's one-sided equation ignores the basic benefits to business viability and profit by government regulation and protection.